Supreme Court, U.S.
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No. 95-842

In The

Supreme Court of the United States

October Term, 1995

YVONNE RAMSDELL,

Petitioner,

vs.

MACHIAS SAVINGS BANK, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents take issue with the question as presented by the Petitioner, insofar as her response to Respondents' Motion for Summary Judgment was not stricken on the basis of Rule 12(f) of the Federal Rules of Civil Procedure.

The question is, thus, whether Petitioner was accorded due process by virtue of the Magistrate Judge's application of Local Rule 19(c) of the United States District Court for the District of Maine and the *de novo* review of the district court's judgment on the merits, conducted by the court of appeals.

LIST OF PARTIES

The list of all corporate parties, parents and subsidiaries contained in the petition pursuant to Rule 29.6 is complete.

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STATEMENT OF THE CASE

Respondents generally adopt the Petitioner's statement of the case, but wish to clarify several critical aspects of the procedural history of this case omitted from Petitioner's recital.

First, the Petitioner omits, from her statement of the case, that she moved for an extension of time to file her opposition to Respondents' Motion for Summary Judgment until November 21, 1994 (the date on which it would have been due, in any event, under local Rule 19(c) of the District of Maine). She filed her opposition on November 22, 1994.

Second, the Respondents' motion to strike was not based upon Rule 12(f) of the Federal Rules of Civil Procedure. Rather, relying upon the inherent authority of the district court to enforce its rules, the Respondents moved to strike the opposition as untimely. They also asked that certain marked material be struck as immaterial , impertinent, and prejudicial, and as barred by an earlier confidentiality order issued by the Magistrate Judge. Indeed, the only reference to Rule 12(f) in the motion to strike was a citation by analogy. (Appendix I, at p. 50a). The Magistrate's order that the response be stricken does so relying on "the Court's power to enforce its own local rules" and makes no reference, by analogy or otherwise to Rule 12(f). (Appendix G).

Upon reconsideration of his order striking the opposition materials, the Magistrate evaluated whether Petitioner's late filed materials should be considered in the context of the seven factors set forth in the First Circuit decision, *United States v. Roberts*, 978 F.2d 17, 21-22 (1st Cir. 1992). Applying the balancing test prescribed by *Roberts*, the Magistrate examined the utility of the materials which had been stricken. The Magistrate enumerated many examples of the manner in which those materials have no relationship to the matters addressed by the complaint nor the

Motion for Summary Judgment. He, therefore, concluded that the opposition had no utility to the Court. (Appendix E, at 21a).

Having stricken the opposition materials as untimely, the Magistrate, nevertheless, recognized that "a failure to respond to a motion for summary judgment does not amount to a waiver of Petitioner's objection under Local Rule 19(c)." Rather, a party who fails to object in a timely fashion is deemed to have consented to the moving party's statement of facts to the extent that statement is supported by appropriate record citations. The Magistrate, then, examined the merits of Respondents' motion and analyzed it "in the light most favorable to Petitioner." (Appendix F, citing *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991)).

Subsequently, the Petitioner filed a brief seeking de novo review of the Magistrate Judge's recommended decision. (Appendix D at 15a). The district court issued its order on January 3, 1995, adopting the recommended decision and granting judgment for the Respondents. (Appendices D and C). Finally, the First Circuit Court of Appeals reviewed the judgment of the district court on the merits. The First Circuit affirmed the entry of judgment in favor of Respondents, noting that "Mrs. Ramsdell failed to show that she suffered prejudice as a result of the magistrate judge striking her opposition to the motion for summary judgment."

REASONS FOR DENYING THE WRIT

I.

ENFORCEMENT OF LOCAL RULE 19(c) OF THE DISTRICT OF MAINE DOES NOT INFRINGE UPON THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION ABSENT A SHOWING OF EXCUSABLE NEGLECT.

The power of lower federal courts to disregard untimely pleadings is not absolute. In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership et al.*, 507 U.S. 380 (1993), this Court construed federal rules of bankruptcy procedure which set forth deadlines for filing proofs of claim. In that context, this Court interpreted the "excusable neglect" language in Federal Bankruptcy Rule 9006 to encompass an attorney's late filing of a proof of claim which omission was ascribed to an ambiguity in the notice establishing the bar date. While this petition may be distinguished by reason of the absence of any reference to "excusable neglect" in Rule 19(c) of the District of Maine, *Pioneer* is especially instructive in evaluating this petition, as well as the merits of this appeal. Notwithstanding the lack of accommodation for excuse in the language of the local rule, the imposition of sanctions for failure to plead on a timely basis in the First Circuit does require a balancing of interests to determine whether the dereliction is, otherwise, excusable. *United States v. Roberts*, 978 F.2d 17 (1st Cir. 1992). In *Pioneer*, this Court cited *Roberts* with approval, noting that the factors enunciated therein are consistent with the "excusable neglect" standard incorporated in Fed. Civ. Proc. R. 6(b). 113 S. Ct. 1489, 1496 n. 9 (1993). Petitioner, however, fails to identify in her petition grounds which would justify a tolling of the ten day period within which to oppose Respondents' Motion for Summary Judgment prescribed by Rule 19(c) of the District

Court of Maine. The Magistrate found her reasons insufficient when applying the *Roberts* test. (Appendix E).

Absent some extraneous reason which impaired her ability to act within the same time period imposed upon every litigant before the United States District Court in Maine, or other excusable neglect, the enforcement of Rule 19(c) is within the inherent power of the magistrate judge, subject to the supervision of the district court judge and reviewable by the court of appeals for abuse of discretion. *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). Rather than suggest that her neglect should be excused, Petitioner argues that the penalties outlined in Rule 19(c) are too severe. Deadlines may lead to unwelcome results, but they prompt parties to act, and they produce finality. *Taylor v. Freeland & Krong, et al.*, 503 U.S. 638 (1992).

Federal procedural rules have long been enforced, to the letter, even when the consequence of enforcement is to bar federal review of constitutional claims. *Yakus v. United States*, 321 U.S. 414 (1944); *Browder v. Director, Illinois Dept. of Corrections*, 434 U.S. 257 (1978).

In resolving similar due process questions as those raised by the Petitioner, this Court has held in the context of state imposed procedural rules, "It is beyond dispute that a state may erect reasonable procedural requirements to the exercise of a right to an adjudication." *Logan v. Zimmerman Brush Co.*, 45 U.S. 422, 102 S. Ct. 1148, 1157 n. 7 (1982). Due process mandates only a meaningful opportunity to assert a claim. 102 S. Ct. at 1157. There is a vital interest to be served by procedural rules because these rules channel disputes to the stage of the judicial process in which they can most fairly and effectively be resolved. *Coleman v. Thompson*, 111 S. Ct. 2546, 2564-65 (1991).

Local Rule 19(c) has been the subject of considerable

litigation in the state of Maine. *See, e.g., Cardente v. Fleet Bank of Maine, et al.*, 146 F.R.D. 13 (D. Me. 1993). Attorneys practicing in Maine have long been on notice that the rule is strictly enforced. *Gideon v. Administrator U.S. Small Business Administration*, 102 F.R.D. 604, 607 (D. Me. 1984) ("compliance with Local Rule 19(c) is indispensable to the orderly, efficient and expeditious management of the extensive motion practice of this Court."). It was amended in 1993 to resolve earlier perceived ambiguities so that there can be no question about its interpretation or its application to the facts of any given case.

Thus, the ambiguity which weighed in favor of finding "excusable neglect" in *Pioneer Investment* is absent in this case. Rule 19(c) is precise. The district court's enforcement of the rule is notorious. Furthermore, Petitioner failed to meet her own self-imposed deadline. She requested until November 21 to file her opposition materials. She filed them on November 22.

Petitioner's argument that there should be some lesser penalty, short of striking her response to Respondents' Motion for Summary Judgment is presumptuous. It ignores the myriad decisions interpreting the rule, as well as the amendments clarifying the rule. The argument also presumes that the court considered her to have waived all objections to the motion for summary judgment. That is not the case. Pursuant to Rule 19(c), a party who fails to object in a timely fashion is deemed to have consented to the moving party's statement of facts only to the extent that statement is supported by appropriate record citations. Summary judgment is appropriate only if the record before the court establishes the moving party is entitled to a judgment as a matter of law. Therefore, the striking of Petitioner's opposition did not bar her from obtaining a favorable ruling based on issues of law presented by the motion if she was entitled to one. Moreover, had the Magistrate or the district court ignored disputed material issues of fact as a result of striking the

opposition, Petitioner could have called them to the attention of the court of appeals in her brief on appeal. She did not and the court of appeals affirmed the district court judgment, in part, due to her omission.

II.

THERE IS NO INTER-CIRCUIT CONFLICT TO BE RESOLVED BY THIS COURT.

Petitioner's reference to *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9th Cir. 1993), as evidence of an inter-circuit conflict is completely inapposite. In *Gill*, the appellate court ruled that the district court had erred in entering partial summary judgment solely on the basis of a local rule violation. The trial court's discretion was held to have been abused when exercised to grant a motion for summary judgment when the movant's papers were insufficient, standing alone, to support the motion. Here, of course, following examination by the magistrate and *de novo* review by both the district court and the court of appeals, the Respondents' papers were deemed to be sufficient to support a judgment in favor of Respondents.

The *Gill* decision does not fly in the face of practice in the district of Maine for the simple reason that the local rule reviewed is utterly different from Local Rule 19(c). The local rule of the District Court of Arizona which was reviewed by the Ninth Circuit stated:

> If the opposing party does not serve and file the required answering memoranda . . . such non-compliance may be deemed a consent to denial or granting of the motion summarily.

See Gill at *id.* 14 through 15 quoting Local Rule 11(i) of the

District Court of Arizona. This rule was struck down by the Ninth Circuit as too draconian in the context of a summary judgment proceeding because it eliminated the need of the moving party to meet the initial burden of proof on the elements of the case. *Id.* at 15 through 17.

The decision cited by Petitioner known as *John v. Board of Trustees for State Colleges and Universities*, 757 F.2d 698 (5th Cir. 1985), similarly does not present a disposition that is at odds with the standard adopted by the First Circuit and the District Court of Maine. Just as the Arizona local rule was more draconian than the District Court of Maine's Rule, so the Louisiana local rule was not of the same tenor. The local rule examined by the Fifth Circuit in the *John* case provided:

> If the respondent opposes a motion, he shall file his response, brief, and such supporting documents as are then available within 10 days after service of the motion.

The rule was silent as to the consequences of the failure to file, and the court decided that the failure to file an opposition on a Motion for Summary Judgment, in and of itself required the granting of the motion. The Fifth Circuit, upon review of the District Court's decision, found that this result was at odds with the provisions of Federal Rule of Civil Procedure 56 which permits the entry of summary judgment only if the record establishes that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id.* at page 707.

III.

THE PROCEDURE FOLLOWED BY THE MAGISTRATE JUDGE IN ENFORCEMENT OF LOCAL RULE 19(c) IS CONSISTENT WITH THE PROCEDURE ESTABLISHED BY RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Clearly, the power to enforce procedural rules is also constrained by the Federal Rules of Civil Procedure. Rule 83 Fed. R. Civ. P. gives each district court the authority to "make and amend rules governing its practice not inconsistent with [Federal Rules of Civil Procedure.]" A local rule that is inconsistent, on it face, with the federal rules cannot stand. Moreover, it would be inappropriate to sustain a district court's construction of its own rules, if that construction rendered an otherwise valid local rule inconsistent with the federal rules. *See Woodman v. American Cystoscope Co.*, 335 F.2d 551, 556 (5th Cir. 1964). So, a construction of Rule 19(c), in the context of a summary judgment motion, which is inconsistent with Rule 56 of the Federal Rules of Civil Procedure cannot stand. However, the application of Rule 19(c) in this case is consistent with Rule 56 in both its literal language and in the construction given it by the Magistrate Judge.

Rule 56(e) provides, in part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 56 imposes the initial burden upon the moving party to demonstrate an entitlement to judgment based upon the record. It shifts the burden to the non-moving party only after the moving party discharges the initial burden of demonstrating that "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgments as a matter of law." There is no consequence to the defaulting non-moving party until the movant establishes a *prima facie* case. If the moving party fails to discharge this burden, summary judgment must be denied — even if the non-moving party has not responded to the motion.

Preliminarily, the Magistrate found that Petitioner's opposition materials were of no utility in evaluating Respondents' motion. (Appendix E, p. 21(a); Appendix G, p. 36(a)). Once Petitioner's opposition was stricken, the Magistrate entered into a separate analysis of the facts as presented by Respondents to determine whether the materials filed in support of summary judgment entitled the Respondents to summary judgment. The Magistrate found that the evidence on record sustained Respondents' defenses before recommending that judgment be entered for Respondents, as prescribed by Rule 56(e).

IV.

RULE 12(f) IS NOT IMPLICATED IN THE JUDGMENT BELOW.

In granting the Motion to Strike before Petitioner filed a timely opposition, the Magistrate Judge relied on the Court's inherent power to enforce its rules as enunciated in *Winters v. FDIC*, 812 F. Supp. 1, 3 (D. Me. 1993). The argument that Petitioner was deprived of her due process rights by virtue of the

striking of a memorandum pursuant to Rule 12(f) is, thus, a contrivance. No such finding is referenced in the entire order.

CONCLUSION

Petitioner's opportunity to be heard was not expunged by reason of her failure to file opposition materials on time. On her appeal to the court of appeals, she had the opportunity to come forward with record references to demonstrate a genuine issue of fact for trial. She failed to do so. The application by the magistrate judge of Local Rule 19(c) was consistent with the manner in which summary judgment motions are to be adjudicated pursuant to Rule 56 of the Federal Rules of Civil Procedure. Rule 56, while it requires the non-moving party to come forward with evidence in addition to that which may have been alleged in the complaint, preserves the rights of a defaulting non-party by requiring that the moving party sustain its initial burden of proof that there is no genuine issue of fact for trial.

Insofar as the foregoing represents the procedure enunciated by the federal rules and applied uniformly in the federal courts, Petitioner's petition for writ of certiorari should be denied.

Dated: December 28 , 1995

Respectfully submitted,

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